IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5676 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JUNAGADH NAGAR PALIKA

Versus

COLLECTOR

Appearance:

MR ARUN H MEHTA for Petitioner

MR SK PATEL for Respondents

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 28/04/2000

ORAL JUDGEMENT

Alongwith MCA 755 of 2000, this Special Civil Application is also placed. Learned counsel appearing in the matter have requested the court to take up the matter. Mr. Mehta, learned counsel appearing in the

matter submitted that the subject matter of the petition is an order made by District Magistrate, Junagadh on 24.03.1988, the copy of which is produced on record at Annexure A. Reading the same, it appears that there was a Resolution passed by Municipality, the items of which were appearing at Sl.No.34, 37, 38 and 40 of the Agenda. The order pertains to Item No.34 and 37. So far as Item No.34 is concerned, that pertains to payment of fees to an advocate engaged by the applicant Nagarpalika to defend the proceedings filed against it in the High Court. Obviously, when the advocate is engaged by the Nagarpalika, fees are required to be paid. In the order, there is no reference to the amount of fees, nature of work, consultation and such other services rendered by the learned counsel appearing in the matter. Once a decision is taken to engage an advocate, the fees are required to be paid and, therefore, the order passed by the Collector staying Item No.34 on the ground that the decision is not taken has no substance. It is required to be noted that if the Nagarpalika has not engaged an advocate, Nagarpalika may not be defended before the court and there may be serious consequences as the court may pass an ex-parte order. I find no justification for passing the impugned order by granting permanent stay. As a result, order at Annexure 'A' in so far as it pertains to item no.34 is quashed and set aside.

2. So far as Item No.37 of the Agenda is concerned, the learned counsel fairly pointed out that the land in question was given to one Trust. This court is not concerned with the amount to be charged. However, when a property was required to be given on rent, it would have been just and proper to enter into the transaction of the nature alleged after inviting tender or following such procedure by which there cannot be any grievance against the act of the Municipality by the citizens and, therefore, I find no reason to disturb the order with regard to Item No.37. The application stands partly allowed accordingly. Rule made absolute accordingly. No order as to costs.

hki